

CASE NO 86-1687

①

Supreme Court, U.S.
FILED
MAR 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

OCTOBER, 1986 TERM

STEPHEN D. HAMPTON,

Petitioner,

vs.

JAY W. BREWER, in his capacity as
Appeal Officer for the DEPARTMENT
OF ADMINISTRATION, an agency of
the STATE OF NEVADA; STATE OF
NEVADA,

Respondents.

BY WRIT OF CERTIORARI
FROM THE NEVADA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Stephen D. Hampton
In Propria Persona
428 South Sixth Street
Las Vegas, Nevada 89101
Tel. # (702) 384-6600

44 ppd

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY
AT THE TIME OF FILMING. IF AND WHEN A
BETTER COPY CAN BE OBTAINED, A NEW FICHE
WILL BE ISSUED.

1 PETITION FOR WRIT OF CERTIORARI
2

3 COMES NOW Petitioner, in proper person
4 (under the authority of 28 USC 1654), and
5 respectfully submits the following Petition
6 for Writ of Certiorari:

7 The questions presented for review
8 are: (1) Should NRS 616.5422(3) be interpreted
9 as allowing Petitioner (a lay agent) the
10 right to represent claimants in administrative
11 hearings before Nevada Appeals Officers? (2) Did the Nevada Supreme Court, by
12 interpreting NRS 616.5422(3) as not allowing
13 Petitioner the right to represent claimants
14 in administrative hearings before Appeals
15 Officers, thereby deny Petitioner the equal
16 protection of the laws, and by denying him
17 an opportunity to earn lawful income,
18 thereby deprive him of property without due
19 process of law, both in violation of the
20 Fourteenth Amendment to the U. S. Constitu-
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1 tition? (3) Did the Nevada Supreme Court, by
2 so interpreting NRS 616.5422(3), and impli-
3 citly rejecting Plaintiff's argument that
4 NRS 616.5422(3) is capable of two interpre-
5 tations, one raising serious constitutional
6 questions, and one not, and therefore that
7 the interpretation not raising such ques-
8 tions should be adopted, thereby implicitly
9 decide a federal constitutional question in
10 a way in conflict with applicable decisions
11 of this honorable Court, and thereby deny
12 Petitioner due process and equal protection
13 of the laws, again in violation of the Four-
14 teenth Amendment to the U. S. Constitution?

15
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The opinions delivered in the courts below, from which Petitioner seeks relief, are as follows: (1) Order Dismissing Appeal, Nevada Supreme Court, case no. 17727, filed December 23, 1986; published as Opinion March 4, 1987; (2) Order of Nevada Supreme Court, case no. 17727, filed February 6, 1987, treating a motion to vacate order as a request for rehearing, and denying same. Copies of both orders are attached hereto.

The jurisdiction of this honorable
Court is invoked upon the following grounds:

(i) Petitioner seeks review of Order Dismissing Appeal, Nevada Supreme Court, case no. 17727, filed December 23, 1986.

(ii) The Nevada Supreme Court, in effect, denied a request for rehearing on February 6, 1987.

(iii) Petitioner believes that this honorable Court has jurisdiction over this



matter pursuant to 28 USC 1257, which provides that:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

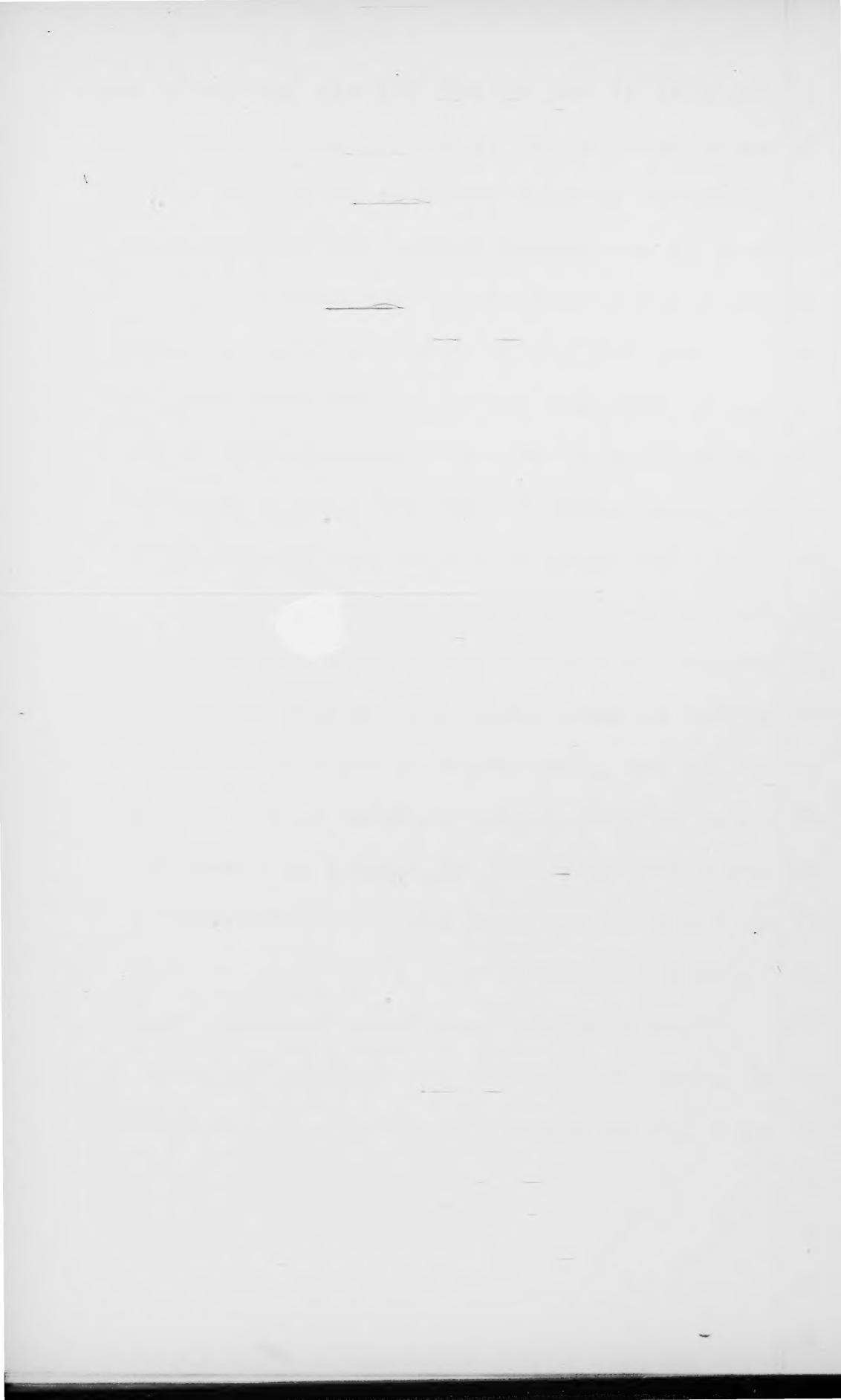
The case involves the Fourteenth Amendment to the U. S. Constitution (hereinafter U. S. Con., 14th A.), NRS 616.541, and NRS 616.5422(3). Section 1 of U. S. Con., 14th A. provides in relevant part that "No State shall make or enforce any law which shall abridge the privileges or immunities of



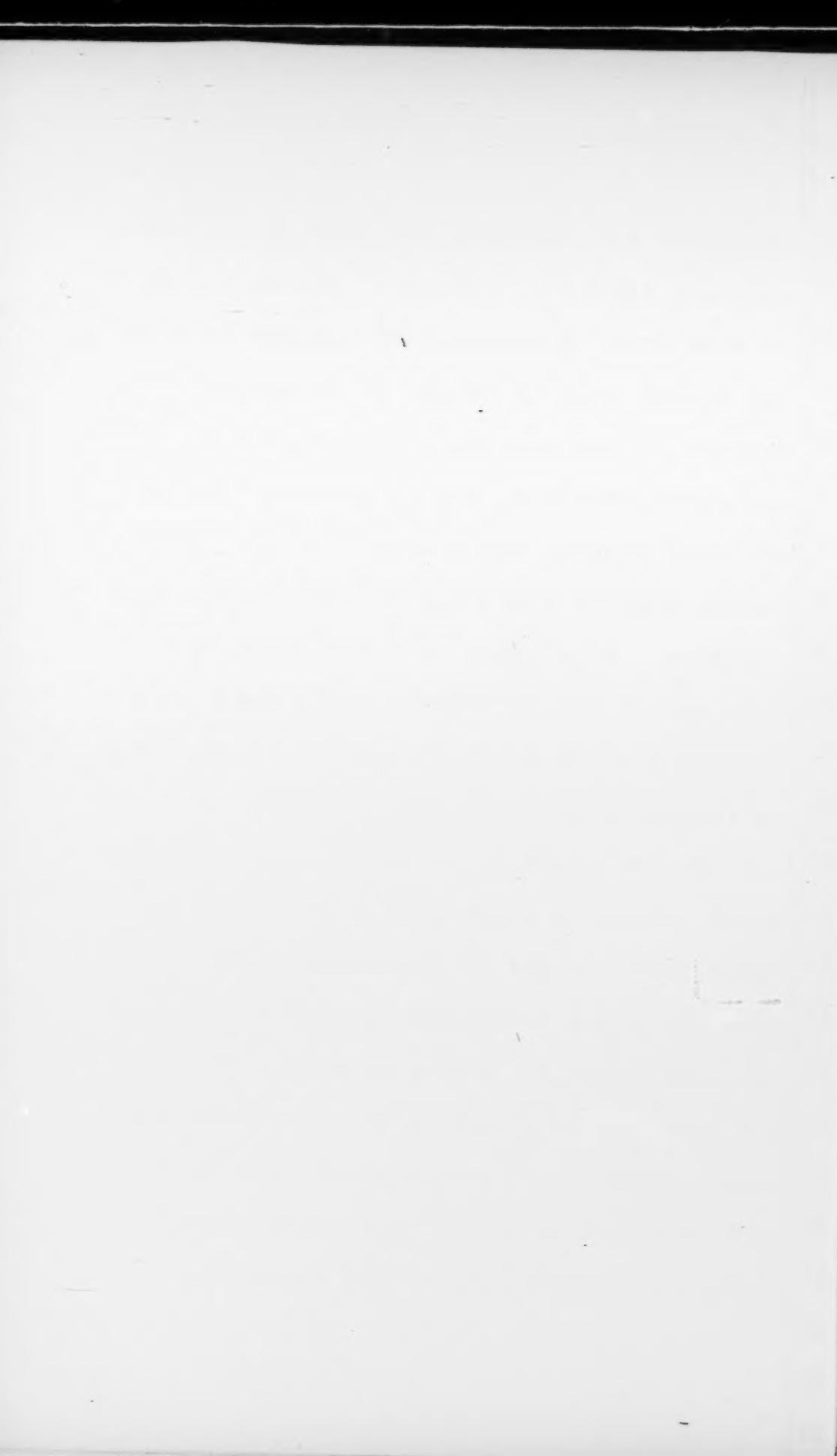
1 citizens of the United States; nor shall any
2 State deprive any person of life, liberty or
3 property, without due process of law; nor
4 deny to any person within its jurisdiction
5 the equal protection of the laws."

6 NRS 616.541(2) provides that "An insu-
7 rer or employer may be represented in a con-
8 tested case by private legal counsel or by
9 any other agent." NRS 616.5422(3) provides
10 that "The appeals officer shall, within 10
11 days after receiving a notice of appeal,
12 schedule a hearing for a date and time
13 within 60 days after his receipt of the
14 notice and give notice by mail or by per-
15 sonal service to all parties to the appeal
16 and their attorneys or agents at least 30
17 days before the date and time scheduled"
18 (emphasis added).

19 Petitioner's case is as follows: that
20 to interpret NRS 616.541 and NRS 616.5422(3)
21 as allowing non-attorney agents to represent



1 employers and insurers, but forbidding non-
2 attorney agents to represent claimants, is
3 to deny equal protection of the law to
4 lay agents who, by choice or necessity,
5 represent only claimants in industrial
6 insurance hearings, and to deprive them of
7 property without due process of law. The
8 Nevada Supreme Court has so interpreted said
9 statutes. Petitioner is a lay agent who, by
10 both choice and necessity, represents only
11 claimants at industrial insurance hearings.
12 Petitioner also notes that claimants have a
13 concomitant right to be represented by a lay
14 agent, which is inextricably connected to
15 Petitioner's right to represent them.
16 However, since Petitioner is not a claimant
17 for industrial insurance benefits, he does
18 not have direct standing to assert the clai-
19 mants' right to be represented, but he does
20 have standing to assert his concomitant
21 right to represent them, and should his
22



1 claim prevail, the inextricably connected
2 right of claimants would be, by logical
3 implication, established.

4 Secondly, Petitioner contends that, at
5 the very least, the Nevada Supreme Court's
6 interpretation of NRS 616.541 and NRS
7 616.5422(3) raises grave and serious consti-
8 tutional questions regarding due process and
9 equal protection of the laws. It is a uni-
10 versally accepted principle of construction
11 in this nation, among both federal and state
12 courts (including Nevada), that where a sta-
13 tute may be interpreted in either one of two
14 ways, and one interpretation raises serious
15 constitutional questions, but the other does
16 not, the one which does not should be adop-
17 ted. NRS 616.5422(3) is sufficiently ambi-
18 guous that it may be interpreted either as
19 allowing lay agents to represent claimants
20 at hearings before Appeals Officers, or as
21 not so allowing. The former interpretation



1 raises no constitutional questions; the lat-
2 ter one does. Therefore the former inter-
3 pretation should be adopted. However, the
4 Nevada Supreme Court has adopted the oppo-
5 site interpretation. By so doing, it has
6 implicitly decided a federal constitutional
7 question in a way in conflict with decisions
8 of this honorable Court, other state courts,
9 and itself.

10 The federal constitutional questions
11 raised herein were first raised in the ori-
12 ginal court, in a motion for leave to be
13 represented by agent other than counsel,
14 pages 3-4 and 5-6, attached to the Complaint
15 for Declaratory Relief filed by Petitioner
16 on July 22, 1985. They were not raised -
17 again at the appellate level, but only
18 because the Nevada Supreme Court dismissed
19 Petitioner's appeal without allowing Peti-
20 tioner to file any briefs or make oral argu-
21 ment. The Nevada Supreme Court passed upon
22



1 the federal constitutional claims raised by
2 Petitioner by rejecting them without giving
3 any reason therefor, or even explicitly
4 acknowledging that the claims had been made,
5 as the attached orders show.

6 Petitioner contends that the writ
7 should be issued, and argues as follows:
8 U. S. S. Ct. Rule 17 provides that:

9 A review on writ of certiorari
10 is not a matter of right, but
11 of judicial discretion, and
12 will be granted only when
13 there are special and
14 important reasons therefor.
15 The following, while neither
16 controlling nor fully
17 measuring the Court's
18 discretion, indicate the
19 character of reasons that will
20 be considered: . . . (b) When
21 a state court of last resort
22 has decided a federal question
23 in a way in conflict with the
24 decision of another state
25 court of last resort or of a
federal court of appeals. (c) When a state court or a
federal court of appeals has
decided an important question
of federal law which has not
been, but should be settled by
this Court, or has decided a
federal question in a way in
conflict with applicable
decisions of this Court.



1 In the instant matter, by interpreting NRS
2 616.5422(3) and NRS 616.541 as allowing lay
3 agents to represent employers and insurers,
4 but not claimants, the Nevada Supreme Court
5 implicitly rejected Petitioner's claim that
6 so interpreting said statutes would deny him
7 equal protection and due process of law, or
8 at least raise a serious question of same,
9 and that whenever a statute is susceptible
10 to two different interpretations, one raising
11 serious constitutional questions, one not,
12 the one which does not should be adopted.

13 By implicitly rejecting that argument, the
14 Nevada Supreme Court decided a federal con-
15 stitutional question in a way in conflict
16 with applicable decisions of this honorable
17 Court, other state courts, and even itself!

18 For instance, this honorable Court held
19 in NLRB_v._Jones_&_Laughlin_Steel_Corp., 57
20 S. Ct. 615, 301 U.S. 1, 81 L. Ed. 893: "As
21 between two possible interpretations of a



1 statute, by one of which it would be uncon-
2 stitutional, and by the other valid, the
3 duty of the court is to adopt that which
4 will save the statute." Also, in NLRB, op.
5 cit., at 894, this honorable Court held that
6 "A statute should be so construed as to
7 avoid serious doubt as to its constitutio-
8 nality." Similarly, in Chippewa Indians of
9 Minnesota v. U.S., 57 S. Ct. 826, 301 U.S.
10 358, 81 L. Ed. 1156, this Court held that
11 "An act of Congress should not be given a
12 construction which will imperil its validity
13 where it is reasonably open to a construc-
14 tion free from such peril." The two cases
15 just cited dealt with federal statutes.
16 However, Casey v. South Dakota, 39 S. Ct.
17 403, 250 U.S. 118, 63 L. Ed. 886, dealt with
18 the construction of a state statute. In
19 that case, this honorable Court held that
20 "Where a statute is reasonably susceptible
21 of two interpretations, by one of which it
22 would be clearly constitutional and by the



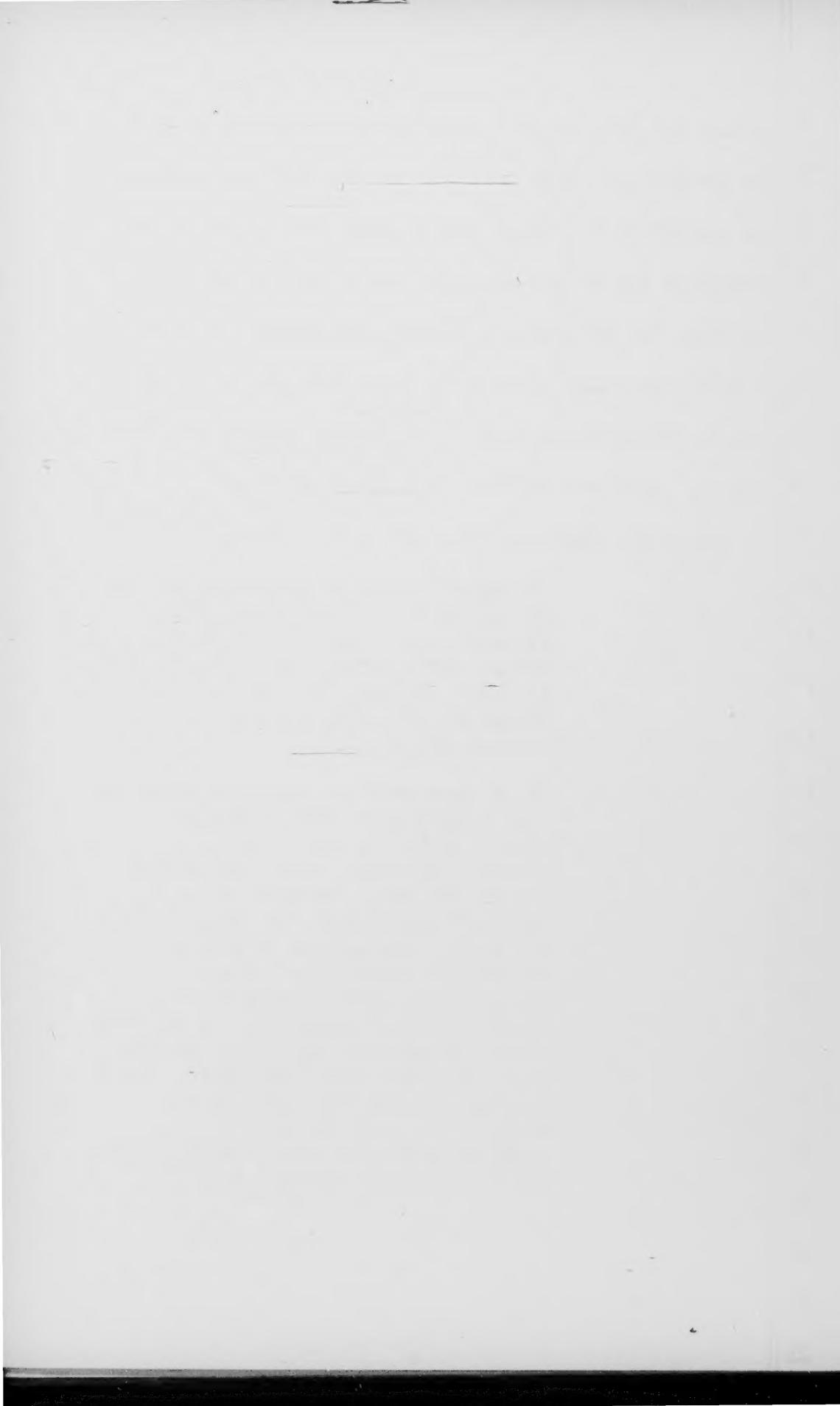
1 other of which its constitutionality would
2 be doubtful, the former construction should
3 be adopted." This principle has also been
4 adopted by state courts in every state.

5 Volume 16 of Corpus Juris Secundum (C. J. S.),
6 Constitutional Law #96, pp. 307-8, citing
7 supporting case law from every state in the
8 Union, including Nevada, states that:

9 b. Statute Susceptible of Two Constructions

10 In construing a statute which
11 is susceptible of two con-
12 structions, the court will
13 adopt that construction of the
14 statute which, without doing
15 violence to its language, will
16 render it valid.

17 If a statute is susceptible of
18 two constructions, one of
19 which will render it
20 constitutional and the other
21 of which will render it
22 unconstitutional in whole or
23 in part, or raise grave and
24 doubtful constitutional
25 questions, the court will
 adopt that construction of the
 statute which, without doing
 violence to its language, will
 render it valid, and give
 effect to all of its
 provisions, or which will free
 it from doubt as to its



constitutionality. So, the construction presumptively intended by the legislature, and one not raising constitutional doubts or questions, will be adopted.

There are special and important reasons for granting this petition, for the rights not merely of claimant representatives, but also those of claimants for industrial insurance benefits, are involved herein. The courts' denial of constitutional and statutory rights of claimants greatly limits the range of options of representation that claimants have, and impairs their ability to protect their rights and interests under the industrial insurance act. Since employers and insurers almost always have more resources available than individual claimants, the claimant, by the very nature of things, faces an unequal contest from the beginning. Putting claimants at an additional disadvantage by forbidding them agent representation, while allowing it to employers and insurers,



1 is flagrantly inequitable. Petitioner main-
2 tains therefore that both equitable and for-
3 mal legal considerations call for the grant-
4 ing of this petition for certiorari.

5 Given the Nevada Supreme Court's unex-
6 plained departure from a principle of con-
7 struction which has been universally accep-
8 ted, even by the Nevada Supreme Court
9 itself, and which has a substantial bearing
10 upon the constitutional rights of citizens,
11 exercise of this honorable Court's supervis-
12 ory powers would be reasonable, just, and
13 proper.

14 WHEREFORE, Petitioner prays that this
15 honorable Court hear his voice crying in the
16 wilderness for justice and consistent inter-
17 pretation of law, and grant a Writ of Cer-
18 tiorari to review the above-referenced mat-
19 ter.

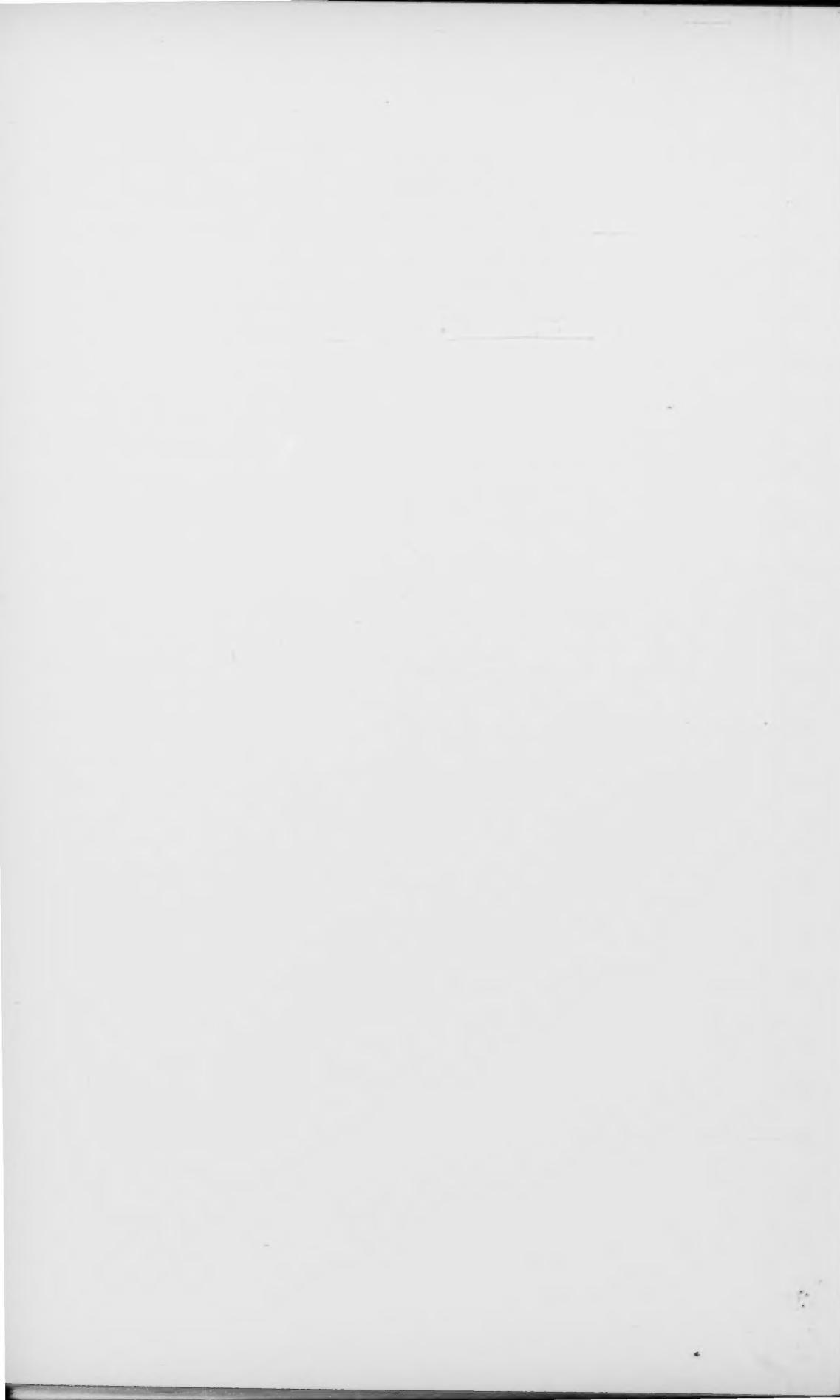
20 Respectfully submitted this 21st day
21 of March, 1987.



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Stephen D. Hampton

Stephen D. Hampton, Petitioner
In Propria Persona
428 South Sixth Street
Las Vegas, Nevada 89101
Tel. # (702) 384-6600



1 CERTIFICATE OF MAILING

2

3 Pursuant to U.S. Supreme Court Rule 28,

4 I hereby certify that I am Stephen D. Hamp-

5 ton, and that on this date I deposited for

6 mailing at Las Vegas, Nevada, with postage

7 fully prepaid, three true copies of the

8 foregoing PETITION FOR WRIT OF CERTIORARI,

9 addressed as follows:

10 BRIAN CHALLY, ESQ.
11 Deputy Attorney General
12 Capitol Complex
12 208 North Fall Street
Carson City, Nevada 89710

13 and that there is regular service by mail
14 between Las Vegas and the place so
15 addressed.

16

17 DATED this 21st day of March, 1987.

18

19 
20 Stephen D. Hampton



1 APPENDIX_I
2

3 IN THE SUPREME COURT OF THE STATE OF NEVADA
4

5 STEPHEN D. HAMPTON,) No. 17727
6)
7 Appellant,)
8)
9 vs.) FILED
10) DEC 23 1986
11 JAY W. BREWER, APP-) JUDITH FOUNTAIN
12 PEAL OFFICER FOR) CLERK OF SUPREME
13 DEPARTMENT OF)
14 ADMINISTRATION,)
15 STATE OF NEVADA,)
16)
17 Respondent.)
18)
19)-----
20)
21)
22)
23)
24)
25)

11 ORDER_DISMISSING_APPEAL
12

13 This is a proper person appeal from an
14 order of the district court granting summary
15 judgment in respondent's favor.

16 Appellant filed a complaint in the dis-
17 trict court seeking a declaration that clai-
18 mants seeking worker's compensation benefits
19 could be represented by agents other than
20 counsel in administrative proceedings held
21 on contested claims. Respondent answered



1 the complaint and thereafter the parties
2 filed cross motions for summary judgment.
3 On September 10, 1986, the district court
4 found that claimants seeking worker's com-
5 pensation benefits were not entitled to be
6 represented by agents other than counsel in
7 administrative proceedings held on contested
8 claims. Therefore, the district court gran-
9 ted respondent's motion for summary judgment
10 and denied appellant's countermotion for
11 summary judgment. This appeal followed.

12 Summary judgment is appropriate only
13 where no genuine issues of fact remain for
14 trial and one party is entitled to judgment
15 as a matter of law. See NRCP 56(c); Paci-
16 fic Pools Constr. v. McClain's Concrete, 101
17 Nev. 557, 706 P. 2d 849 (1985). In the pre-
18 sent case, appellant claimed that, pursuant
19 to NRS 616.5422(3), he was entitled to rep-
20 resent claimants in administrative proceed-
21 ings held on contested worker's compensation



1 claims even though he is not an attorney.

2 NRS 616.5422(3) provides:

3 3. The appeals officer
4 shall, within 10 days after
5 receiving a notice of appeal,
6 schedule a hearing for a date
7 and time within 60 days after
8 his receipt of the notice and
9 give notice by mail or by
personal service to all
parties to the appeal and
their attorneys or agents at
least 30 days before the date
and time scheduled. (Emphasis
supplied.)

10 Appellant claimed the reference to "agents"
11 in NRS 616.5422(3), supra, conferred upon
12 claimants the right to be represented by
13 non-attorney agents in administrative pro-
14 ceedings before the State Industrial Insur-
15 ance system (SIIS). We disagree.

16 As respondent correctly pointed out
17 below, NRS 616.5422(3), supra, must be read
18 in conjunction with NRS 616.5422(2). See
19 White v. Warden, 93 Nev. 634, 636, 614 P. 2d
20 536, 537 (1980) (statutes must be construed
21 in light of their purposes as a whole). NRS



1 616.541(2) provides:

2 2. An insurer or employer
3 may be represented in a
4 contested case by private
5 legal counsel or by any other
6 agent. (Emphasis added.)

7 We conclude that the statutory scheme set
8 forth above is clear; the statutes in ques-
9 tion allow only an employer or an insurer to
10 be represented by non-attorney agents in
11 administrative proceedings held on contested
12 SIIS claims. Accordingly, the district
13 court did not err by granting respondent's
14 motion for summary judgment.

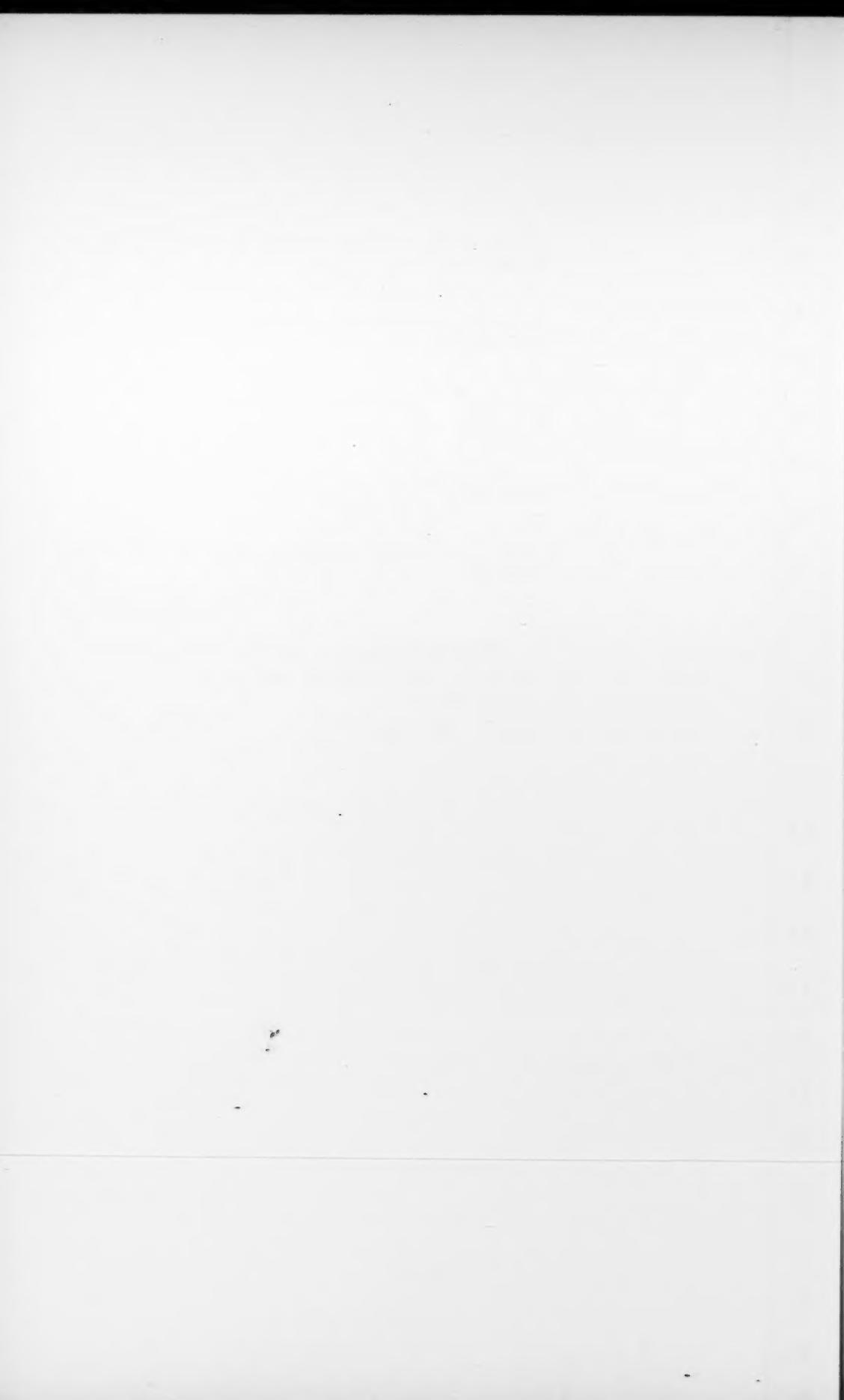
15 Having reviewed the record on appeal,
16 we conclude that appellant cannot demon-
17 strate error in this appeal, and that fur-
18 ther briefing and oral argument are not war-
19 ranted. See Luckett v. Warden, 91 Nev. 681,
20 682, 541 P. 2d 910, 911 (1975), cert. den-
21 ied, 423 U.S. 1077 (1976). Accordingly, we
22 hereby

23 ORDER this appeal dismissed.



Mowbray, C. J.
Springer, J.
Gunderson, J.
Steffen, J.
Young, J.

cc: Hon. Carl J. Christensen, District Judge
Hon. Brian McKay, Attorney General
Stephen D. Hampton
Loretta Bowman, Clerk



1 APPENDIX II
2
3

IN THE SUPREME COURT OF THE STATE OF NEVADA

4 STEPHEN D. HAMPTON,) No. 17727

)

5 Appellant,))

)

6 vs.) FILED

) FEB 6 1987

7 JAY W. BREWER, APP-) J. Richards

EAL OFFICER FOR) JUDITH FOUNTAIN

8 DEPARTMENT OF) CLERK, SUPREME COURT

ADMINISTRATION,)

9 STATE OF NEVADA,)

)

10 Respondent.))

12 ORDER

13 Appellant has filed a motion to vacate
14 our prior order dismissing the appeal in
15 this matter. Cause appearing, we elect to
16 treat the motion as a request for rehearing,
17 and we deny the request. NRAP 40(c).

18 It is so ORDERED.



1 _____, C. J.
2 Gunderson

3 _____, J.
4 Steffen

5 _____, J.
6 Young

7 _____, J.
8 Springer

9 _____, J.
10 Mowbray

11 cc: Hon. Carl J. Christensen, District
12 Judge
13 Hon. Brian McKay, Attorney General
14 Stephen D. Hampton
15 Loretta Bowman, Clerk

16 Q.



1 APPENDIX_III
2

3 FILED
4 JUL 22 3 50 PM '85
5 LORETTA BOWMAN
6 CLERK
7 BY SONIA VILLEDA

8 CASE NO. A 240805
9

10 DEPARTMENT NO. VII
11

12 DOCKET NO. P
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14 IN THE EIGHTH JUDICIAL DISTRICT COURT
15 OF THE STATE OF NEVADA
16

17 IN AND FOR THE COUNTY OF CLARK
18

19 * * * * *

20
21 STEPHEN D. HAMPTON,)
22 vs.) Plaintiff,)
23)) COMPLAINT FOR
24) DECLARATORY RELIEF
25 JAY W. BREWER and MICH-)
NAVE, in their capacity)
Appeals Officers for the)
Department of Adminis-)
tration, an agency of)
the State of Nevada;)
STATE OF NEVADA,)
)
Respondents.)
-----)



1 COMES NOW Plaintiff, in proper person,

2 pursuant to the provisions of NRS 30.010
3 through 30.160, inclusive, and for cause of
4 action against the Defendants, alleges as
5 follows:

6 1. Defendant are, and at all times
7 herein mentioned were, performing their off-
8 icial duties as Appeals Officer for the Dep-
9 artment of Administration, an agency of the
10 State of Nevada, in Clark County, Nevada.

11 2. Plaintiff submitted a Motion for
12 Leave to be Represented by Agent other than
13 Counsel before Appeals Officer Jay W. Brewer
14 on June 25, 1985, on behalf of claimant Cal
15 Caldwell in appeal no. LV 5984. Said Motion
16 is attached hereto as Exhibit A. On July 2,
17 1985, Defendant Brewer denied said Motion in
18 open court.

19 3. An actual controversy has arisen and
20 now exists between Plaintiff and Defendants
21 ⁶ concerning their respective rights and dut-



1 ies in that Plaintiff contends that NRS
2 616.5422(2) should be construed as allowing
3 claimants to be represented by agents other
4 than counsel before Appeals Officers in
5 proceedings under Chapter 616, NRS, whereas
6 Defendants dispute that contention and con-
7 tend that NRS 616.5422(2) should be con-
8 strued as allowing employers and insurers
9 only to be so represented.

10 4. Plaintiff desires a judicial deter-
11 mination of his rights and duties, and a
12 declaration as to whether NRS 616.5422(2)
13 should be construed as allowing claimants
14 the right to be represented by agents other
15 than counsel before Appeals Officers in
16 proceedings under Chapter 616, NRS.

17 5. A judicial declaration is necessary
18 and appropriate at this time under the cir-
19 cumstances in order that plaintiff may
20 ascertain his rights and duties under NRS
21 616.5422(2). Plaintiff has been placed



1 under a severe financial hardship by Defendants' refusal to allow Plaintiff to represent claimants before them in proceedings
2 under Chapter 616, NRS.

3
4
5 6. Plaintiff has exhausted his administrative remedy in this matter, having moved
6 the Appeals Officer in Clark County, Nevada
7 for leave to represent claimants, and having
8 been denied.

9
10 WHEREFORE, plaintiff prays judgment as follows:

11
12 1. For a declaration that NRS
13 616.5422(2) should be construed as allowing
14 claimants the right to be represented by
15 agents other than counsel before Appeals
16 Officers in proceedings under Chapter 616,
17 NRS.

18
19 2. For costs of suit herein
incurred; and

20
21 3. For such other and further
relief as the court may deem proper.



1 Respectfully submitted this 18th day of
2 July, 1985.
3
4

5 -----
6 Stephen D. Hampton
7 428 South Sixth Street
8 Las Vegas, Nevada 89101
9

10 SWORN AND SUBSCRIBED TO before me this 18th
11 day of June, 1985.
12

13 -----
14 NOTARY PUBLIC
15

16 VERIFICATION
17

18 I, Stephen D. Hampton, first being duly
19 sworn, declare:
20

21 I am the plaintiff in the above-entitled
22 action. I have read the foregoing com-
23 plaint and know the contents thereof. The
24 same is true of my own knowledge, except as
25 to those matters which are therein alleged



1 on information and belief, and as to those
2 matters, I believe it to be true.

3 I declare under penalty of perjury that
4 the foregoing is true and correct and that
5 this declaration was executed on July 18,
6 1985 at Las Vegas, County of Clark, Nevada.

7
8
9 -----
10 Stephen D. Hampton
11 428 South Sixth Street
12 Las Vegas, Nevada 89101

13 SWORN AND SUBSCRIBED TO before me this 18th
14 day of July, 1985.
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NOTARY PUBLIC



1 EXHIBIT_A
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3 FILED
4 JUN 25 1985
5 APPEALS OFFICER
6

7 BEFORE THE APPEALS OFFICER
8

9
10 In the Matter of the Con) Contested Industrial) Insurance Claim) of)) Claim Number:
11)) 85-65835
12)) Appeal Number:
13 CAL CALDWELL,) LV 5984
14 Claimant)
15 -----
16

17 MOTION FOR LEAVE TO BE REPRESENTED
18 BY AGENT OTHER THAN COUNSEL
19

20 COMES NOW Claimant, in proper person,
21 and submits the following Motion for Leave
22 to be Represented by Agent other than Coun-
23 sel. This Motion is based upon the Points
24 and Authorities and affidavit attached
25 hereto.

Respectfully submitted this 25th day of
June, 1985.

21 Cal Caldwell
22 1111 Ogden
23 Las Vegas, Nevada 89101
24
25



NOTICE_OF_MOTION

TO: State Industrial Insurance System,
General Counsel
Jones & Jones Bricklayers

4 YOU, and each of you, are hereby noti-
5 fied that the claimant's Motion for Leave to
6 be Represented by Agent other than Counsel,
7 will come on for hearing on the 2nd day of
8 July, 1985, at the hour of 8:30 A.M., or as
9 soon thereafter as counsel and claimant may
10 be heard.

Cal Caldwell
1111 Ogden
Las Vegas, Nevada 89101

POINTS-AND-AUTHORITIES

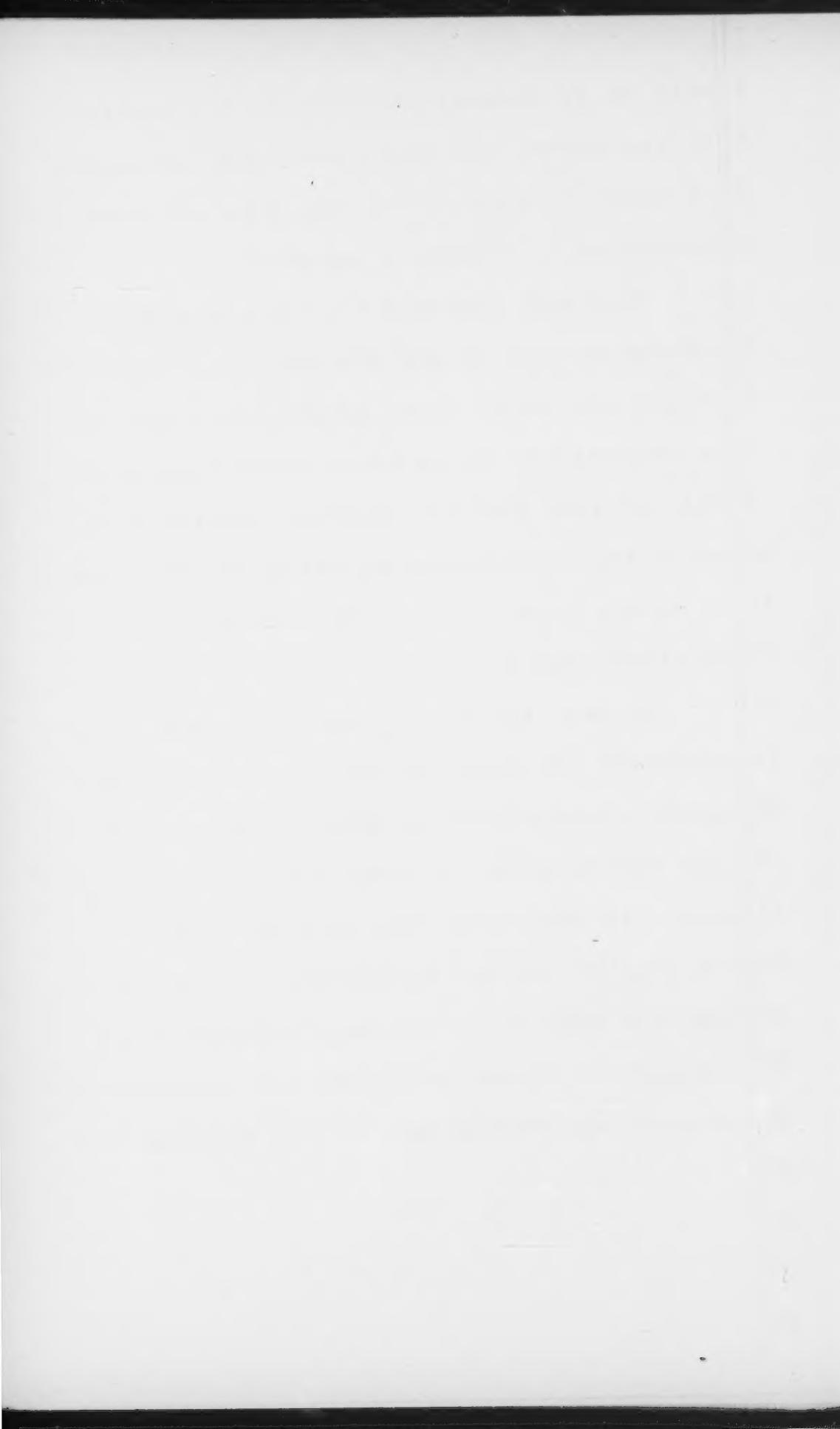
NRS 616.5422(2), as amended effective July 1, 1985 by AB 3, states: "The appeals officer shall, within 10 days after receiving a notice of appeal, schedule a hearing for a date and time within 60 days after his receipt of the notice and give notice by



1 mail or by personal service to all parties
2 to the appeal and their attorneys or agents
3 at least 30 days before the date and time
4 scheduled." (Emphasis supplied.)

5 Claimant contends that the proper
6 interpretation of NRS 616.5422(2) is that it
7 allows any party to an appeal the right to
8 be represented by an agent other than coun-
9 sel, if that party so wishes. Claimant will
10 prove this contention by means of citations
11 of Nevada case law and Attorney General
12 Opinions (AGO's).

13 In Nev. AGO 83-14, the Atty. Gen.
14 addressed the issue of whether non-attorney
15 agents could represent parties in proceed-
16 ings before worker's comp. appeals offi-
17 cers. At that time, the wording of NRS
18 616.5422(2) omitted the phrase "or agents." "NRS 616.5422(2) is the best expression of
19 legislative intent as to who the legislature
20 intended may participate at the hearing, and
21
22



1 such participation is apparently limited to
2 'parties. . . and their attorneys.' Had the
3 legislature intended participation by laymen
4 representatives, it could have included in
5 NRS 616.5422(2) an 'or by their agents'
6 option similar to the one found in the Cali-
7 fornia statute. See NRS 612.705(2) which
8 allows claimants for unemployment compensa-
9 tion to be 'represented by counsel or other
10 duly authorized agent.'" (Nev. AGO 83-14,
11 pp. 3-4.) As of July 1, 1985, NRS
12 616.5422(2) does contain the option ('or
13 agents') mentioned by the Atty. Gen. as indi-
14 cating legislative intent that lay repre-
15 sentatives may participate in hearings bef-
16 ore appeals officers.

17 Claimant also notes that NRS 616.541,
18 as amended effective July 1, 1985, states
19 explicitly that "2. An insurer or employer
20 may be represented in a contested case by
21 private legal counsel or by any other



1 agent." However, there is no explicit
2 statement as to whether claimants may be
3 represented by agents other than counsel.
4 Thus, there arises a possible question of
5 interpretation of NRS 616.5422(2): does it
6 allow employers and insurers only to be rep-
7 resented by agents other than counsel, or do
8 claimants have that right also?

9 Claimant contends that the only reason-
10 able interpretation of NRS 616.5422(2), as
11 amended effective July 1, 1985, is that it
12 allows both employers and insurers, on the
13 one hand, and claimants, on the other, to be
14 represented by agents other than counsel.
15 First, claimant argues that to allow employ-
16 ers and insurers the right to be represented
17 by agents other than counsel, and to deny
18 claimants that same right, would be to deny
19 claimants the equal protection of the laws,
20 and to deprive them of property without due
21 process of law, in violation of the Four-



1 teenth Amendment to the United States Con-
2 stitution (as well as Article 1, Section 8
3 of the Nevada Constitution). By the very
4 nature of things, employers and insurers
5 have an inherent advantage over claimants in
6 litigation regarding workers' compensation
7 claims. To give them a statutory right
8 which is denied to claimants would be to
9 unfairly tip the balance even farther in
10 their favor.

11 Secondly, claimant argues that the wor-
12 kers' compensation law should be liberally
13 construed, and that whenever there is doubt
14 as to the correct construction of a statute,
15 the construction favoring the claimant
16 should be adopted. "Although the workmen's
17 compensation act is in derogation of the
18 common law, it is remedial legislation, and
19 should be liberally construed to effectuate
20 its purpose." Virden v. Smith, 46 Nev. 208,
21 210 P. 129 (1922). The general purpose of
22
23

1 the workers' compensation act, of course, is
2 to compensate employees for industrial inju-
3 ries, irregardless of common law defenses
4 which were traditionally available to the
5 employer. Virden has been cited since by
6 the Nevada Supreme Court in a number of its
7 decisions, namely: Costley v. NIC, 53 Nev.
8 219, at 225, 296 P. 1011 (1931); State ex
9 rel. Progress v. 1st Jud. Dist. Crt., 53
10 Nev. 386, at 391, 394, 2 P. 2d 129 (1931);
11 Int'l Life Underwriters v. 2nd Jud. Dist.
12 Crt., 61 Nev. 42, at 54, 113 P. 2d 616
13 (1941); NIC v. Adair, 67 Nev. 259, at 271,
14 217 P. 2d 348 (1950); NIC v. Peck, 69 Nev.
15 1, at 11, 239 P. 2d 244 (1952).

16 The Nevada Atty. Gen. has also
17 addressed the same issue: "This Act [i. e.,
18 Ch. 616 NRS] is to receive a fair and libe-
19 ral construction for the protection of the
20 employees." (Nev. AGO 142 (7-11-1924),
21 emphasis supplied.) "In practically all



1 jurisdictions, the courts have become com-
2 mitted to a liberal interpretation of work-
3 men's compensation laws so that the humane
4 and beneficial purposes of legislation may
5 be accomplished." (Nev. AGO 295
6 (7-31-1957).

7 Finally, claimant argues that to inter-
8 pret NRS 616.5422(2) as allowing only employ-
9 ers and insurers to be represented by
10 agents other than counsel would be to raise
11 serious questions as to the constitutional-
12 ity of NRS 616.5422(2) (i.e., denial of
13 equal protection of the laws and due process
14 of law), and that to interpret NRS
15 616.5422(2) as applying to both employers
16 and insurers, and claimants, would raise no
17 constitutionality questions regarding NRS
18 616.5422(2), and that it is a general prin-
19 ciple of construction of statutes that where
20 one reading makes a statute unconstitutio-
21 nal, or raises serious constitutional ques-



1 tions, and another reading does not, the
2 construction which does not raise any con-
3 stitutionality questions should be adopted.
4 Therefore, NRS 616.5422(2) should be con-
5 strued as meaning that both claimants, and
6 employers and insurers, may be represented
7 by agents other than counsel before appeals
8 officers. "The legislature is presumed to
9 have intended to legislate constitutionally,
10 and, as between two possible constructions
11 of an ambiguous statute, or an ambiguous
12 word or phrase therein, the construction
13 should be applied which will lead to the
14 constitutionality of the act in preference
15 to construction which would lead to its
16 unconstitutionality." Orr Ditch & Water Co.
17 v. Justice Court of Reno, 64 Nev. 138, 178
18 P. 2d 558 (1947), at 139. "If a statute is
19 susceptible of two constructions, one of
20 which will render it constitutional and the
21 other of which will render it unconstitutio-



1 nal in whole or in part, or raise grave and
2 doubtful constitutional questions, the court
3 will adopt the construction of the statute
4 which, without doing violence to its lan-
5 guage, will render it valid, and give effect
6 to all of its provisions, or which will free
7 it from doubt as to its constitutionality."

8 Volume 16, Corpus Juris Secundum, Constitu-
9 tional Law #96b (pp. 307-8). It would do no
10 violence to the language of NRS 616.5422(2)
11 to interpret it as allowing claimants, as
12 well as employers and insurers, to be repre-
13 sented by agents other than counsel in hear-
14 ings before appeals officers.

15 WHEREFORE, claimant respectfully repre-
16 sents that he has a statutory right to be
17 represented by an agent other than counsel
18 in this matter, if claimant so desires. On
19 the basis of the foregoing, then, and the
20 affidavit attached hereto, claimant respect-
21 fully requests that the appeals officer



1 grant the claimant herein leave to be repre-
2 sented by an agent other than counsel,
3 namely: Mr. Stephen D. Hampton of the Peo-
4 ple's Defense, a labor relations consulting
5 firm located at 428 South Sixth Street, Las
6 Vegas, Nevada 89101.

7 Respectfully submitted,

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10
11 Cal Caldwell
12 1111 Ogden
13 Las Vegas, Nevada 89101

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24 **AFFIDAVIT**

I, Cal Caldwell, first being duly
sworn, depose and say:

That I wish to be represented in my
hearing before the appeals officer (appeal
number LV 6289) by an agent other than coun-
sel, namely: Mr. Stephen D. Hampton of the
People's Defense, a labor relations consult-
ing firm located at 428 South Sixth Street,



1 Las Vegas, Nevada 89101, and that I make
2 this choice of agent of my own free will.

3 That I do not have the means to retain
4 private counsel.

5 That I do not wish to be represented by
6 the State Industrial Attorney's office.

7 Further, your affiant saith naught.

10 -----
11 Cal Caldwell
12 1111 Ogden
13 Las Vegas, Nevada 89101

14 SWORN AND SUBSCRIBED TO before me this 25th
15 day of June, 1985.

16 -----
17 NOTARY PUBLIC
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1 CERTIFICATE OF MAILING

2 I hereby certify that service of the
3 above and foregoing MOTION FOR LEAVE TO BE
4 REPRESENTED BY AGENT OTHER THAN COUNSEL was
5 made this 25th day of June, 1985, by deposi-
6 ting a true and correct copy thereof in the
7 United States mail at Las Vegas, Nevada,
8 postage prepaid, addressed to the following,
9 and further that there is regular service by
10 mail between the place of mailing and the
11 places so addressed:

12 STATE INDUSTRIAL INSURANCE SYSTEM
13 P. O. Box 26929
13 Las Vegas, NV 89126-0929

14 JONES & JONES CO.
15 2761 Quebec Court
15 Las Vegas, NV 89122

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17 -----
17 Stephen D. Hampton
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